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No. 08-322

IN THE

Supreme Court of the United States

NORTHWEST AUSTIN MUNICIPAL UTILITY DISTRICT NUMBER ONE,

Appellant,

v.

ERIC HOLDER, Attorney General of the United States, et al.

Appellees.

On Appeal from the United States District Court for the District of Columbia

BRIEF OF BARBARA LEE, MEMBER OF CONGRESS AND CHAIR OF THE CONGRESSIONAL BLACK CAUCUS, NYDIA VELÁZQUEZ, MEMBER OF CONGRESS AND CHAIR OF THE CONGRESSIONAL HISPANIC CAUCUS AND MICHAEL HONDA, MEMBER OF CONGRESS AND CHAIR OF THE CONGRESSIONAL ASIAN PACIFIC AMERICAN CAUCUS, ET AL., AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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INTEREST OF AMICI CURIAE

Amici curiae[1] are elected members of the United States House of Representatives.[2] These elected officials include 41 members of the Congressional Black Caucus ("CBC"), 23 members of the Congressional Hispanic Caucus ("CHC"), and 11 members of the Congressional Asian Pacific American Caucus ("CAPAC") (collectively, the "Tri-Caucus").[3] These caucuses were established to provide representation and constituency service for millions of American voters from communities whose experiences with racial discrimination in voting prompted passage of the Voting Rights Act of 1965. The growth of each caucus's membership has made Congress more racially diverse and inclusive, in large part due to the successful enforcement of the Voting Rights Act's preclearance provisions in covered jurisdictions. Many of these members publicly

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[1] Letters of consent by the parties to the filing of this brief have been lodged with the Clerk of Court pursuant to Rule of the Supreme Court of the United States 37.3. In accordance with Rule of the Supreme Court of the United States 37.6, *amici curiae* certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *amici curiae* and their counsel, made a monetary contribution to the preparation or submission of this brief.

[2] A complete listing of all *amici* is attached as Appendix A.

[3] Each of the three caucuses has at least one member who is a U.S. Senator. The signatories to this brief are all members of the U.S. House of Representatives. Further, some members belong to multiple caucuses. See Appendices C-E.

supported and cast floor votes in favor of extending the preclearance provisions in 2006.[4]

The two issues presented in this case are (1) whether petitioner-appellant, a local utility district in Texas, is entitled to preclearance "bailout", under Section 4(a) of the Voting Rights Act and (2) if not, whether the recently renewed preclearance provisions of the Act remain a constitutionally valid exercise of Congress's authority to root out racial discrimination in the area of voting as embodied by Section 2 of the Fifteenth Amendment and Section 5 of the Fourteenth Amendment. Because of the Act's effective record of deterring discrimination in the voting process, *amici* have an interest in defending the preclearance regime to secure the voting rights of the millions of Americans they serve.

SUMMARY OF ARGUMENT

Amici curiae strongly contend that the preclearance requirement outlined in Section 5, 42 U.S.C. § 1973 [hereinafter Section 5], of the Voting Rights Act remains a permissible and effective statutory tool for eliminating and deterring voting discrimination in the political process. Section 5 helps to ensure that state and local jurisdictions do not implement discriminatory voting changes that

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[4] Other members took office following the reauthorization of the Voting Rights Act in 2006, but signal their support for the legislation by joining as *amici* herein.

might otherwise deny or abridge the right to vote with respect to race.

Steadfast enforcement of the Voting Rights Act, which provides opportunities for voters to participate in the political process and to elect their candidates of choice, has led to greater diversity in Congress along with many state and local legislative bodies. But these changes are of a relatively recent vintage. This is particularly so when compared to the extended period in which the denial and abridgement of the franchise was the norm.

While the advancements for minority voters are rightly lauded, the lesson of America's difficult history of race and politics teaches that these gains are often fragile. The efforts to secure greater levels of political incorporation for racial minority groups have played and continue to play an important role in American Democracy. Yet, as the Jim Crow experience following the derailed Reconstruction aptly demonstrates, withdrawing federal protections that effectively remedy and deter discrimination effectively should be approached with great care.

In light of this history along with a thorough, carefully reviewed record of ongoing voting discrimination in those jurisdictions covered by Section 5, Congress renewed the preclearance requirement with an overwhelmingly bi-partisan vote in 2006. *See* 152 CONG. REC. H5148 (daily ed. July 13, 2006) (statement of Rep. Melvin Watt) (noting that the reauthorization was "the product of a long-

term, thoughtful, and thorough bipartisan deliberation" and that the Voting Rights Act is "arguably the most carefully reviewed civil rights measure in our Nation's history."). That extension was fully warranted to help complete the important task commenced in 1965 – to ensure that every American, regardless of race, enjoys an equal voice in our nation's governance. Accordingly, this Court should find that the reauthorization of Section 5 was within the proper scope of Congressional enforcement authority under the Fourteenth and Fifteenth Amendments.

ARGUMENT

I. The Diversity in Contemporary Politics Is a By-Product of Steadfast Voting Rights Enforcement.

The Voting Rights Act of 1965 "is about protecting the most basic and significant civil right[ ] for all American citizens, the right to vote." 152 CONG. REC. H5152 (daily ed. July 13, 2006) (statement of Rep. Grace Napolitano). Many describe the initial passage of the Voting Rights Act as the start of America's Second Reconstruction. J.. Morgan Kousser, *The Voting Rights Act & Two Reconstructions in* CONTROVERSIES IN MINORITY VOTING 135, 136-37. (Bernard Grofman & Chandler Davidson eds., 1992); *see also* C. Vann Woodward, THE FUTURE OF THE PAST 199 (1989). The Act came in the aftermath of an era characterized by rampant discrimination and brutality. *Amici* John Lewis (D-

GA) reminded Congress in 2006 about the immediate events in March, 1965 that first moved Congress to enact this landmark statute. Long before he was elected to political office, Representative Lewis was a disenfranchised minority voter seeking to have his voice heard: "When we marched from Selma to Montgomery in 1965, it was dangerous. It was a matter of life and death. I was beaten, I had a concussion at the bridge. I almost died. I gave blood, but some of my colleagues gave their very lives." 152 CONG. REC. H5164 (daily ed. July 13, 2006) (Statement of Rep. John Lewis); *see also* John Lewis, WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT (1999). Passage of the Voting Rights Act has helped to transform the political landscape in a variety of ways, and signs of the change are evident in today's politics.[5]

For minority groups that have experienced unlawful political exclusion, electing preferred candidates is an important barometer of their incorporation. On this score, notable gains have been made in legislatures at the state and federal levels. These gains are attributable, in large part, to the important protections and safeguards provided by the Voting Rights Act and its Section 5 preclearance

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[5] One of the primary concerns of the Act is increasing political participation. Data on registration and turnout during the relevant enforcement period shows signs of progress for all three non-white communities. See Appendix B. Still, a sizable lag in these measures remains – particularly for Hispanic and Asian American populations -- relative to the national average.

remedy. *See* 152 CONG. REC. H5152 (daily ed. July 13, 2006) (statement of Rep. Linda Sánchez) ("The Voting Rights Act plays a critical role in fulfilling the promise of American democracy. It has given voice to minority communities, and without it, many black, Hispanic, and Asian American leaders would not be holding elected office today."). However, these gains remain fragile as a result of ongoing racially polarized voting and its manipulation by officials. By working to protect districts where minorities have an opportunity to elect candidates of choice, Section 5 of the Voting Rights Act has led to increased diversity in our nation's state and federal legislative bodies. *See generally* QUIET REVOLUTION IN THE SOUTH. (Chandler Davidson & Bernard Grofman eds., 1994).

At the state level, the number of black legislators in preclearance states has grown since the last renewal of Section 5 in 1982. Between 1984 and 1998, the number of black state legislators increased by at least fifty percent in several covered jurisdictions, including South Carolina, Georgia, Florida, New York and Mississippi. David Bositis, JOINT CENTER FOR POLITICAL & ECONOMIC STUDIES, BLACK ELECTED OFFICIALS: A STATISTICAL SUMMARY 2000 (2002), The ranks of Hispanic state legislators also show similar gains, rising from a national total of 69 in 1985 to 233 by 2006. Their advancement has been most pronounced in the States of California, Florida, Texas, and Arizona (all of which are, in whole or in part, subject to preclearance review). NALEO EDUC. FUND, NAT'L ASS'N OF LATINO ELECTED & APPOINTED OFFICIALS, 2008 GENERAL ELECTION

PROFILE: LATINOS IN CONGRESS AND STATE LEGISLATURES AFTER ELECTION 2008: A STATE-BY-STATE SUMMARY (2008). Asian Americans now serve in a total of 90 state legislative seats nationwide. NATIONAL ASIAN PACIFIC AMERICAN POLITICAL ALMANAC 2007-08, 82 (Don T. Nakanishi & James S. Lai eds., 13th ed. 2007).

Amici themselves provide the clearest evidence of a changed environment in Congress. *See, e.g., Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act: Hearing Before the Subcomm. on the Constitution, H. Comm. on the Judiciary*, 109th Cong. (Oct. 20, 2005) (statement of Rep. Sánchez), at 111 (noting that "as the only Latina on the House Judiciary Committee," the hearings regarding the reauthorization of the VRA are "significant to me and thousands [of] residents in my home state of California").

When they first organized, the CBC and CHC collectively numbered fewer than two dozen members. Over the last two decades, however, these groups have grown and have expanded their geographical reach. *See* Appendices C-E. The establishment of CAPAC in 1994 was another important milestone; its ten founding members represented progress when compared to the arrival of the lone Asian-American member of Congress who

served in the 1950s.[6] These groups collectively help make the current Congress a significantly more representative body that better reflects the racial diversity of our nation.[7] Moreover, these members are often at the center of legislative action; many hold key policymaking roles on Capitol Hill.

Critically, these signs of progress at the state and federal levels are directly linked to the critical benefits afforded by Section 5. In addition, this progress is an indicator that Section 5 operates successfully to prevent discrimination in many forms. *Amici* have well-founded concerns about the potential for backsliding and retrenchment in the absence of Section 5's crucial protections. Throughout the reauthorization process, several *amici* urged their colleagues to support reauthorization in light of the significant work left to do. *See, e.g.,* 152 CONG. REC. H5146 (daily ed. July 13, 2006) (statement of Rep. John Conyers) ("And though there is much to celebrate, efforts to suppress or dilute minority votes...are still all too common. I am proud of the progress we have made, but the record shows that we haven't reached a point where the particular

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[6] *See e.g.*, David S. Broder & Kenneth Cooper *Asian Pacific Caucus* WASH. POST May 22, 1994, at A10 (discussing the membership and purposes of the CAPAC).

[7] The current session of the U.S. House of Representatives also includes Rep. Keith Ellison of Minnesota (a member of the CBC) the country's first Congressman of Muslim faith and Rep. Joseph Cao of Louisiana (a member of the CAPAC) its first Vietnamese-American Congressman.

provisions in the act should be allowed to lapse"); *id.*, at H5148, (statement of Rep. Watt) ("We should be clear: although the successes of the Voting Rights Act have been substantial, they have not been fast and they have not been furious. Rather, the successes have been gradual and of very recent origin. Now is not the time to jettison the expiring provisions that have been instrumental to the success we applaud today. In a Nation such as ours, we should want and encourage more Americans to vote, not fewer."); *id.*, at H5164 (statement of Rep. Lewis) ("Yes, we have made some progress. We have come a distance. We are no longer met with bullwhips, fire hoses, and violence when we attempt to register and vote. But the sad fact is, the sad truth is discrimination still exists, and that is why we still need the Voting Rights Act. And we must not go back to the dark path. We cannot separate the debate today from our history and the past we have traveled.").

II. Expansion and Retrenchment In The Long Struggle to Extend the Franchise to Minority Voters.

A common theme found in the briefs filed by opposing parties and their aligned *amici* is that we have entered an era in which discrimination no longer seriously threatens the political rights of minority voters. *See, e.g.,* Brief for Appellant Northwest Austin Municipal Utility District Number One, NAMUDNO v. Holder, No. 08-322, at 1-2, 27.

That notion simply is not consistent with America's long experience with regulating the right to vote, particularly when it comes to extending the franchise to non-white citizens. Nor is it consistent with the record that was before Congress in 2006. As Justice Kennedy only recently observed, "racial discrimination and racially polarized voting are not ancient history." *Bartlett v. Strickland*, No. 07-689, 2009 WL 578634, at *16 (U.S. 2009). These recent steps toward full political incorporation remain fragile and therefore ought to be guarded carefully. This is precisely what Congress sought to do by carefully studying the effects of Section 5 and subsequently reauthorizing the preclearance remedy.

The voluminous Congressional record supporting the 2006 renewal includes testimony from scholars, litigators, historians, experts and others arguing that the right to vote has been contested at almost every point in this nation's history. *See Voting Rights Act: Section 5—Preclearance Standards: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 67 (2005) While the historical evolution in America has been one in which we have moved to extend the franchise to previously excluded citizens, that movement has regrettably included periods of retrenchment and retraction. ALEXANDER KEYSSAR, THE RIGHT TO VOTE 106 (2000). As Congress recognized in the 2006 reauthorization, the nation's 19th century Reconstruction experience provides a very poignant and telling illustration of our nation's voting rights struggle.

Ratification of the Fifteenth Amendment in 1870 marked an important stage of the effort to secure the fundamental right of citizenship regardless of race. *South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966). Within five years of the Amendment's ratification, Congress passed bills prohibiting voter intimidation and bribery, establishing federal supervision of Congressional elections, and banning extralegal political violence. Kousser, *supra* at 138-39. During this period, black political participation spiked in Southern states, and black state and federal legislators from this region grew to 324 by 1872 – the high point of the Reconstruction era. *Ibid.*

However, the nation's commitment to enfranchise freedmen gave way to political compromise in 1877. C. VANN WOODWARD REUNION AND REACTION 210-20 (1956). The twenty-five years that followed included the dismantling and reversal of anti-discrimination laws. Absent federal protections, black voters and officeholders had no effective means to defend against a widespread campaign to roll back their hard-won gains. Tactics used to restrict or dilute the franchise included gerrymandering, statutory suffrage restriction, and constitutional disfranchisement. All of these manipulative devices utilized state power and were designed with a patently unconstitutional goal – to eliminate every element of black political influence in the South permanently. The strategy was feasible because the federal government had prematurely retreated from the goal of giving full force and effect to the Fifteenth Amendment. *See, e.g., United States*

v. Cruikshank, 92 U.S. 542, 559 (1875); *United States v. Reese*, 92 U.S. 214 (1875).

The change of fortunes for black political incorporation after 1877 was as precipitous as it was predictable. KEYSSAR, *supra*, at 114. As Southern disfranchising tactics became more successful, white supremacists regained political power in state and local government. They then moved quickly to entrench their control over the political process by establishing a racially-exclusive political system. As a consequence of more restrictive and discriminatory provisions, black participation in all forms evaporated in the South. By 1898, the number of black state and federal lawmakers in the former Confederacy had plummeted to ten. The lone black member of Congress, George White from North Carolina, left office in 1901.

Blacks were not the only Americans subjected to these indignities of second-class citizenship. Following the Mexican-American War, the 1848 Treaty of Guadalupe-Hidalgo granted citizenship to thousands of Hispanics who were living in the areas acquired by the United States. Thereafter, Mexican-Americans in particular, and Hispanics and general were saddled by a variety of state laws, including literacy tests, specifically designed to prevent them from exercising their right to vote. Chinese Americans were also barred from voting during this era. *See Voting Rights Act: Section 203 Bilingual Election Requirements: Hearing Before the Subcomm. on the Constitution, H. Comm. on the Judiciary*, 109th Cong. at 6 (November 8, 2005) (statement of

Rep. Mike Honda) (noting ongoing voting discrimination faced by the Asian and Pacific American community and observing that "Chinese-Americans could not vote until the Chinese Exclusion Acts of 1882 and 1892 were repealed in 1943" and "[f]irst-generation Japanese-Americans could not vote until 1952, because of the racial restrictions contained in a 1790 naturalization law. . . ").

The ugly and prolonged period of racial disfranchisement between 1877 and 1965 is assailable both due to the denial of constitutional rights and governance that remained largely unresponsive to the concerns of minority citizens. During these years, national and state government actors embarked on programs that largely erased any semblance of equality for non-whites. Meanwhile, legislative efforts to prohibit lynching, segregation in housing and education, and other indignities met with incessant filibusters in the U.S. Senate leaving millions of minority citizens without effective representation or redress.

III. Congress Found That Minority Voters Face Ongoing Voting Discrimination in the Covered Jurisdictions

The historical record summarized above teaches that backsliding and retrenchment in the absence of Section 5 hold dire consequences for minority voters. The potential for backsliding was a significant concern in the 2006 Congressional decision to renew the Act. *Amici* and other members of Congress also heard testimony that helped illustrate these risks

from witnesses describing discriminatory voting changes that the Section 5 preclearance provision kept at bay. *NAMUDNO v. Mukasey*, 573 F. Supp. 2d 221, 247-265 (D.D.C. 2008) Although Congress reviewed evidence from a variety of souces, *amici* highlight three categories here:

1. Non-Compliance with Section 5

One category of evidence demonstrating the ongoing need for preclearance enforcement is the persistent unwillingness of some jurisdictions to submit voting changes for review. As Congress found, this resistance illustrates a naked refusal by some jurisdictions to comply with the basic pre-approval requirements codified within Section 5. *See* H.R. REP. NO. 109-478, at 41–44 (2006); *see also* 152 Cong. Rec. H.5143 (daily ed. July 13, 2006) (statement of Rep. F. James Sensenbrenner) ("[H]istory reveals that certain States and localities have not always been faithful to the rights and protections guaranteed by the Constitution, and some have tried to disenfranchise African American and other minority voters through means ranging from violence and intimidation to subtle changes in voting rules. As a result, many minorities were unable to fully participate in the political process for nearly a century after the end of the Civil War. The VRA has dramatically reduced these discriminatory practices and transformed our Nation's electoral process and makeup of our Federal, State, and local governments.").

Three particular instances of non-compliance deserve special note. First, officials in the state of South Dakota made plain their disdain for the review process by avoiding the preclearance mandate for almost thirty years, leaving hundreds of voting changes unexamined. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 12 (2005) (statement of Laughlin McDonald). Officials subsequently found that several of these unsubmitted voting changes threatened the rights of Native American voters.

Congress also found persuasive similar findings made by this Court in *Lopez v. Monterey County,* 525 U.S. 266, 273 (1999), that officials in Monterey County, California had wrongfully implemented state election law changes that had not undergone preclearance review. This Court also found that related laws dating as far back as 1979 had not, but should have been, submitted for federal preclearance. H.R. REP. NO. 109-478, at 42 (2006). In addition, Congress received evidence showing that federal courts in Monroe, Louisiana enjoined local elections in 1991 due to unreviewed changes in that jurisdiction's election scheme. *Id.* at 43; *see also* Brief of Reps. John Conyers, Jr. et al. as Amici Curiae in Support of Appellees at 17, NAMUDNO v. Holder, No. 08-322 (2009).

Congress examined far more examples of jurisdictions failing to comply with the mandate of Section 5. But these examples are representative of

the kinds of cases that led Congress to find that more time was needed to assess the effect of and compliance with the preclearance mechanism in the covered jurisdictions.

2. Continued Preclearance Objections

A second category of record evidence that Congress reviewed is the significant number of proposed election changes that warranted preclearance objections. H.R. REP. NO. 109-478 at 21 (2006). More than four decades after the enactment of Section 5's preclearance requirement, some state and local jurisdictions continue to invite multiple objections. These objections offer extremely valuable insight about the frequency with which the preclearance remedy successfully prevents discriminatory changes in the election process from taking hold. *See* Brief for Intervenors-Appellees Rodney and Nicole Louis, et al.; Lisa and David Diaz, et al.; Angie Garcia, et al.; and People for the American Way at 30–33, NAMUDNO v. Holder, No. 08-322 (2009) [hereinafter Brief for Intervenors-Appellees].

The redistricting of Louisiana's state legislature offers one of the clearest examples of a state that has been especially resistant to change. Every initial redistricting plan adopted at the start of the decade has failed to satisfy the requirements for preclearance; indeed, the state has received at least one objection for this plan in every cycle since 1965.

Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views from the Field: Hearing on S. 2703 Before the Subcomm. on the Constitution, Civil Rights and Prop. Rights of the S. Comm. on the Judiciary, 109th Cong. 132 (2006) [hereinafter *S. Hearing* 109-822] (statement of Debo P. Adegbile); Brief for Intervenors-Appellees, *supra*, at 34–35,).

Other jurisdictions have shown a proclivity for pursuing suspiciously-timed election changes. In Freeport, Texas, for example, the Department of Justice objected to a proposed change to an at-large system in 2002, just after a Hispanic- preferred candidate won office for the first time in a single member district. *To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing on H.R. 9 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 7 (statement of the Hon. Jack Kemp, former Member of Congress, former Sec'y of Hous. & Urban Dev.) (2005); *Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing on H.R. 9 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 47 (2005) (testimony of Anita S. Earls).

In Monterey County, California, a similar case involved the local school board. There, white board members sponsored a public ballot measure to prevent more Hispanic- preferred candidates from winning seats on that body. In objecting to that change, the Attorney General found that the proposed shift to at-large elections "contained

language that was expressed in a tone that 'raises the implication that the petition drive and the resulting change was motivated, at least in part, by a discriminatory animus.'" *Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options After* LULAC v. Perry*: Hearing on S. 2703 Before the Subcomm. on the Constitution, Civil Rights and Prop. Rights of the S. Comm. on the Judiciary*, 109th Cong. 111 (2006) (statement of Joaquin G. Avila). In each instance, preclearance objections helped to shield minority voters from the discriminatory effects of proposed election changes.

3. Racially Polarized Voting

The Congressional record assembled evidence that revealed the deleterious effects of pervasive and persistent racially polarized voting in the covered jurisdictions. H.R. REP. NO. 109-478, at 34–35 (2006). Racially polarized voting facilitates purposeful discrimination because it permits jurisdictions to design methods of election or adopt devices that interact with the polarization to prevent minority voters from electing candidates of choice. *Id,* at 34.

Witnesses before Congress testified about several cases in which racially polarized voting patterns maintained an "election ceiling" that limited the political opportunity for non-white voters and their preferred candidates. *Id.* This pattern held true in cases for voters in different minority communities. As late as 2000, for instance, neither Hispanic nor

Native American candidates had ever won an election in a majority-white election district. *Id.* Since 1966, racial polarization remained a significant obstacle across the South to the success of black candidates for state legislative office outside of majority-black constituencies: "There is little support for the optimistic view that blacks will win many House seats in white majority districts." *S. Hearing* 109-822, *supra*, at 183 (statement of David T. Canon). Similarly, Hispanics are "rarely elected outside of Latino majority districts." Alvaro Bedoya, *The Unforseen Effects of Georgia v. Ashcroft on the Latino Community*, 115 YALE L.J. 2112, 2136 (2006).

Additional evidence heard by Congress adds detail about the negative effects that polarization can have on minority- preferred candidates. Congress received testimony, for example from Professor Theodore Arrington, describing polarization as "a pervasive feature of American politics." *The Continuing Need for Section 5 Pre-Clearance: Hearing on S. 2703 Before the S. Comm. on the Judiciary*, 109th Cong. 9 (2006) (testimony of Theodore S. Arrington).

There was also testimony that revealed the continuing existence of outright racial appeals in some jurisdictions— further evidence of continuing voting discrimination. In fact, in one successful campaign of a black candidate in North Carolina with the last name "Campbell," the candidate elected to use a soup label rather than his own picture for all of his campaign literature. *Id.* at 141 (statement of

Anita S. Earls). Another example concerns a white voter in Southwestern Virginia who told a black Congressional candidate, who had attended a local political function: "It's a pleasure to meet you. You speak very well. You would have done a lot better if you had not made an appearance here because you have a white last name...and we're all voting for those candidates." *Id.* at 140.

The examples described above are far from exhaustive. *See, e.g.*, Brief for Intervenors-Appellees, *supra*, at 14-52. Indeed, other evidence considered by Congress, and detailed in the parties' briefs, includes the Department of Justice's requests for more information (MIRs) regarding proposed voting changes; the deployment of federal observers to jurisdictions where minority voters face polling place barriers; Section 5 enforcement actions; judicial preclearance actions; and evidence yielded by litigation under other provisions of the VRA, including Section 2. Congress also heard powerful and compelling evidence from a significant number of witnesses, including constituents represented and served by *amici*, who helped animate the experience of minority voters throughout the covered jurisdictions.

In its totality, the record presented to Congress was replete with evidence showing problems that were widespread, intransigent, and recent. These lamentable findings quite vividly illustrate the extent

to which the preclearance requirement remains necessary to accomplish the transformative goals of the Fourteenth and Fifteenth Amendments.

IV. Preclearance Is a Crucial Tool for Realizing America's Democratic Goals.

Amici contend that the preclearance requirement provides crucial protection for minority voters, many who live in jurisdictions they represent and serve in Congress. However, these voters are not the only ones whose core political rights are at stake in this case. The continued enforcement of Section 5 also advances an even larger institutional goal that inures to the benefit of every American citizen – pluralist democracy. In this sense, Section 5 helps to ensure that all citizens in the United States enjoy the benefit of a more accessible and equal political system.

Pluralist democracy recognizes the value of diversity within the political process, which can help produce a fuller, more comprehensive national policy. This notion is not at all foreign to the reasoning that led the Founders to establish the U.S. Constitution. They envisioned a nation that was sensitive to differences in ethnicity and class, and one that could employ these diverse interests in its dynamic system of governance and representation. One would be hard pressed to find a better expression of the pluralist ideal than in the motto *E pluribus unum* – out of many, one.

This principle is especially important in representative institutions like legislatures, whose main goal is to address the needs of the public. As House Minority Leader during the floor debate of the 2006 renewal, Representative Nancy Pelosi (D-CA) conveyed this point well: "We all know that America is at its best when our remarkable diversity is represented in our Halls of power. We also know that we will still have a great distance to go in order to live up to our Nation's ideals of equality and opportunity." 152 CONG. REC. H5162. (daily ed. July 13, 2006). A democratic institution based upon pluralism provides the building blocks necessary for politics to function well. Democratic pluralism helps establish a level playing field for individuals with cross-cutting interests and ideas to engage in the "push[ing], haul[ing], and trad[ing]" that is commonly associated with politics. *See Johnson v. DeGrandy* 512 U.S. 997, 1020 (1994). Put another way, it provides the opportunity for coalition-building and compromise to emerge.

Many of the views relevant to shaping public policy are a function of life experience. Of course, common experience is not always bound up with membership in a particular racial group. However, our nation's history is a unique one in which race has, at times, played a significant role in shaping life opportunities and outcomes. Thus, race may be one of the factors that inform perspectives and highlight otherwise overlooked effects of a policy proposal. In similar vein, Justice Sandra Day O'Connor

acknowledged the unique contributions to oral arguments and this Court's conferences that the late Justice Thurgood Marshall imparted upon the court precisely because of his "life experiences." Sandra D. O'Connor, *Thurgood Marshall: The Influence of a Raconteur,* 44 STAN. L. REV. 1217, 1217 (1992).

In all of the manners described above, theVoting Rights Act helps government move closer to achieving the goals of a pluralist democracy. It establishes the forum for more meaningful deliberation in institutions, encourages more comprehensive and responsive policymaking, and ultimately strengthens the bond of accountability between voters and their governing institutions. As our country grows increasingly diverse, our governmental institutions must have the capacity to respond to complex problems.

The genius in the design of our constitutional system is that it remains open to innovative methods of making our Union more perfect. The Voting Rights Act and Section 5 are perhaps the best examples of this commitment to improving our democracy. Congress has, in light of historical experience and ample evidence of the present effects of long-term discrimination, found that the preclearance requirement remains an effective tool in this nation's ongoing struggle to guarantee an equal right to vote to all, regardless of race. Accordingly, *amici* urge this Court to uphold Section 5 as a reasonable exercise of Congressional power and as a

fully warranted effort by Congress to continue the solemn task of perfecting our Union.

CONCLUSION

For all of these reasons, *amici* urge this Court to uphold the decision below and find that the preclearance provision remains a constitutionally valid exercise of legislative enforcement authority pursuant to the Fourteenth and Fifteenth Amendments.

Respectfully submitted,

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March 25, 2009

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APPENDIX A
LISTING OF AMICI CURIAE

Tri-Caucus Chairs

Barbara Lee, Member of Congress and Chair, Congressional Black Caucus (CBC)

Nydia M. Velázquez, Member of Congress and Chair, Congressional Hispanic Caucus (CHC)

Michael M. Honda, Member of Congress and Chair, Congressional Asian Pacific American Caucus (CAPAC)

Congressional Black Caucus

Sanford D. Bishop, Jr., Member of Congress

Corrine Brown, Member of Congress

G.K. Butterfield, Member of Congress

André Carson, Member of Congress

Donna Christensen, Delegate to Congress

Yvette D. Clarke, Member of Congress

William Lacy Clay, Jr., Member of Congress

Emanuel Cleaver, II, Member of Congress

James E. Clyburn, Member of Congress

John Conyers, Jr., Member of Congress

Elijah E. Cummings, Member of Congress

Artur Davis, Member of Congress

Danny K. Davis, Member of Congress

Donna F. Edwards, Member of Congress
Keith Ellison, Member of Congress
Chaka Fattah, Member of Congress
Marcia L. Fudge, Member of Congress
Al Green, Member of Congress *
Alcee L. Hastings, Member of Congress
Jesse L. Jackson, Jr., Member of Congress
Sheila Jackson-Lee, Member of Congress
Eddie Bernice Johnson, Member of Congress
Henry C. Johnson, Member of Congress
Carolyn Cheeks Kilpatrick, Member of Congress
John Lewis, Member of Congress
Kendrick B. Meek, Member of Congress
Gregory W. Meeks, Member of Congress
Gwen Moore, Member of Congress
Eleanor Holmes Norton, Delegate to Congress
Donald M. Payne, Member of Congress
Charles B. Rangel, Member of Congress
Laura Richardson, Member of Congress
Bobby L. Rush, Member of Congress
David Scott, Member of Congress
Robert C. Scott, Member of Congress *
Bennie G. Thompson, Member of Congress
Edolphus Towns, Member of Congress
Maxine Waters, Member of Congress
Diane E. Watson, Member of Congress
Melvin L. Watt, Member of Congress

Congressional Hispanic Caucus

Joe Baca, Member of Congress
Xavier Becerra, Member of Congress *
Dennis A. Cardoza, Member of Congress
Jim Costa, Member of Congress
Henry Cuellar, Member of Congress
Charles A. Gonzalez, Member of Congress
Raúl M. Grijalva, Member of Congress
Luis V. Gutierrez, Member of Congress
Rubén Hinojosa, Member of Congress
Ben Ray Luján, Member of Congress
Grace F. Napolitano, Member of Congress
Salomon P. Ortiz, Member of Congress
Ed Pastor, Member of Congress
Pedro R. Pierluisi, Member of Congress
Silvestre Reyes, Member of Congress
Ciro D. Rodriguez, Member of Congress
Lucille Roybal-Allard, Member of Congress
Gregorio Sablan, Member of Congress *
John T. Salazar, Member of Congress
Linda Sánchez, Member of Congress
José E. Serrano, Member of Congress
Albio Sires, Member of Congress

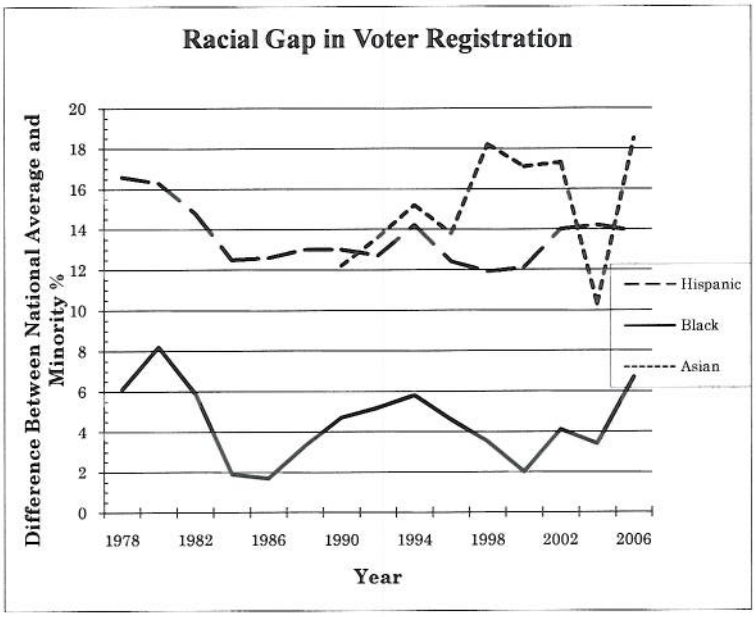
Congressional Asian Pacific American Caucus

Neil Abercombie, Member of Congress
Xavier Beccerra, Member of Congress
Madeleine Z. Bordallo, Delegate to Congress
Eni F.H. Faleomavaega, Member of Congress
Al Green, Member of Congress
Mazie K. Hirono, Member of Congress
Doris O. Matsui, Member of Congress
Gregorio C. Sablan, Member of Congress
Robert C. Scott, Member of Congress
David Wu, Member of Congress

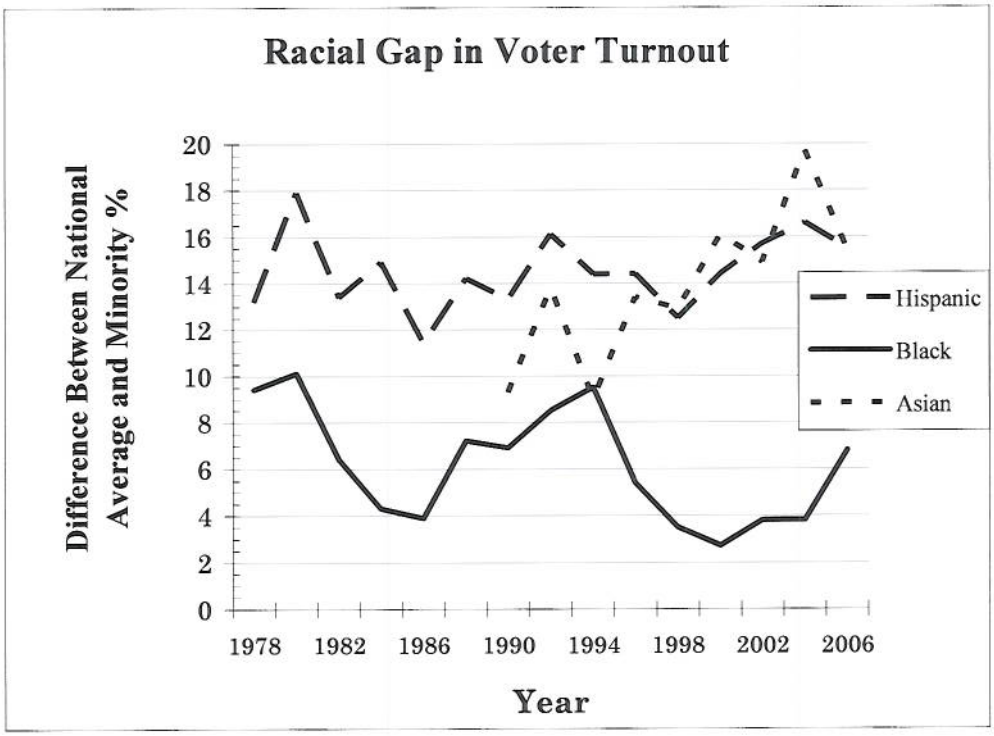
*Also a Member of the CAPAC

APPENDIX B*

RACIAL GAPS IN VOTER REGISTRATION & TURNOUT



* Source: U.S. Census Bureau, Table A1. Located at http://www.census.gov/population/www/socdemo/voting.html."


Racial Gap in Voter Turnout
Difference Between National Average and Minority %
20
18
16
14
12
10
8
6
4
2
0
1978
1982
1986
1990
1994
1998
2002
2006
Year
Hispanic
Black
Asian

APPENDIX C*

MEMBERS OF CONGRESSIONAL ASIAN PACIFIC AMERICAN CAUCUS

Legislator	Year Elected	State – District
Daniel K. Inouye	1962	Senator – Hawaii
Pete Stark	1972	California –13
Eni Faleomavaega	1988	American Samoa
Daniel Akaka	1990[8]	Senator – Hawaii
Neil Abercrombie	1990	Hawaii – 1
Xavier Becerra	1992	California – 31
Lucille Roybal-Allard	1992	California – 34
Robert C. Scott	1992	Virginia – 3
Zoe Lofgren	1994	California – 16
Barbara Lee	1998*	California –9
David Wu	1998	Oregon – 1
Mike Honda	2000	California – 15
Betty McCollum	2000	Minnesota – 4
Raúl M. Grijalva	2002	Arizona – 7

* "Source: *THE ALMANAC OF AMERICAN POLITICS* (Michael Barone & Grant Ujifusa, eds. 2008)."

[8] Appointed to fill a senate seat

Madeleine Z. Bordallo	2002	Guam
Al Green	2004	Texas – 9
Doris Matsui	2005*	California – 5
Mazie K. Hirono	2006	Hawaii – 2
Laura Richardson	2007*	California – 37
Jackie Speier	2008*	California –12
Joseph Cao	2008	Louisiana – 2
Gregorio Sablan	2008	N. Mariana Islands

*Special election

APPENDIX D*

MEMBERS OF CONGRESSIONAL BLACK CAUCUS

Legislator	Year Elected	State – District
John Conyers, Jr.	1964	Michigan –14
Charles B. Rangel	1970	New York –15
Edolphus Towns	1982	New York –10
John Lewis	1986	Georgia – 5
Donald M. Payne	1988	New Jersey –10
Maxine Waters	1990	California – 35
Eleanor Holmes Norton	1990	District of Columbia
Corrine Brown	1992	Florida – 3
Alcee L. Hastings	1992	Florida – 23
Sanford D. Bishop, Jr.	1992	Georgia – 2
Bobby L. Rush	1992	Illinois – 1
Mel Watt	1992	North Carolina – 12
James E. Clyburn	1992	South Carolina – 6
Eddie Bernice Johnson	1992	Texas – 30
Robert C. Scott	1992	Virginia – 3
Bennie Thompson	1993*	Mississippi – 2
Chaka Fattah	1994	Pennsylvania – 2
Sheila Jackson Lee	1994	Texas –18
Jesse L. Jackson, Jr.	1995*	Illinois – 2
Danny K. Davis	1996	Illinois – 7
Elijah E. Cummings	1996*	Maryland – 7

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* "Source: *THE ALMANAC OF AMERICAN POLITICS* (Michael Barone & Grant Ujifusa, eds. 2008)."

Carolyn Cheeks Kilpatrick	1996	Michigan –13
Donna Christensen	1996	U.S. Virgin Islands
Barbara Lee	1998*	California – 9
Gregory Meeks	1998*	New York – 6
William Lacy Clay (Jr.)	2000	Missouri – 1
Diane E. Watson	2001*	California – 33
Artur Davis	2002	Alabama – 7
Kendrick B. Meek	2002	Florida – 17
David Scott	2002	Georgia – 13
Emanuel Cleaver, II	2004	Missouri – 5
G.K. Butterfield	2004*	North Carolina – 1
Al Green	2004	Texas – 9
Gwen Moore	2004	Wisconsin – 4
Hank Johnson	2006	Georgia – 4
Keith Ellison	2006	Minnesota – 5
Yvette D. Clarke	2006	New York – 11
Laura Richardson	2007*	California – 37
Roland W. Burris	2008[9]	Senator – Illinois
André Carson	2008*	Indiana – 7
Donna Edwards	2008*	Maryland – 4
Marcia L. Fudge	2008[10]	Ohio – 11

[9] Appointed to fill President Barack Obama's U.S. Senate seat

[10] Elected to fill vacancy of Rep. Stephanie Tubbs Jones's congressional seat

APPENDIX E*

MEMBERS OF CONGRESSIONAL HISPANIC CAUCUS

Legislator	Year Elected	State – District
Solomon P. Ortiz	1982	Texas – 27
José E. Serrano	1990*	New York –16
Ed Pastor	1991*	Arizona – 4
Xavier Becerra	1992	California – 31
Lucille Roybal-Allard	1992	California – 34
Luis V. Gutierrez	1992	Illinois – 4
Robert Menendez	2006	Senator – New Jersey
Nydia M. Velázquez	1992	New York –12
Rubén Hinojosa	1996	Texas –15
Silvestre Reyes	1996	Texas –16
Ciro Rodriguez	1997* 2006	Texas – 28 Texas – 23[11]

* "Source: *THE ALMANAC OF AMERICAN POLITICS* (Michael Barone & Grant Ujifusa, eds. 2008)."

[11] Rep. Rodriguez was originally elected in a special election in District 28. In 2003, the Texas redistricting scheme shifted large numbers of Democratic voters out of District 23 into the already Democratic District 28. As a result, Rodriguez lost the 2004 Democratic primary to Henry Cuellar. Rodriguez was elected in 2006 in the newly drawn District 23 following the invalidation of the Texas redistricting scheme.

Grace F. Napolitano	1998	California – 38
Charles A. Gonzalez	1998	Texas – 20
Joe Baca	1999*	California – 43
Raúl M. Grijalva	2002	Arizona – 7
Dennis Cardoza	2002	California –18
Linda Sánchez	2002	California – 39
Jim Costa	2004	California – 20
John T. Salazar	2004	Colorado – 3
Henry Cuellar	2004	Texas – 28
Albio Sires	2006*	New Jersey – 13[12]
Ben R. Luján	2008	New Mexico – 3
Gregorio Sablan	2008	N. Mariana Islands– AL
Pedro Pierluisi	2008	Puerto Rico – AL

*Special Election

[12] Rep. Sires was elected to serve the remainder of Rep. Menendez's term after Menendez was appointed to fill a vacancy in the U.S. Senate.